SUPREME COURT, U. S.

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MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1048

RANDY'S HOUSE OF STEELE, INC.,
an Illinois Corporation,

Petitioner,

vs.

AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE,
Chairman and Members of the
Liquor Commission of Lake County,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In The

Supreme Court of the United States

October Term, 1974

No. 74-1048

RANDY'S HOUSE OF STEELE, INC.,
an Illinois Corporation,

Petitioner,

vs.

AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE,
Chairman and Members of the
Liquor Commission of Lake County,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Randy's House of Steele, Inc., plaintiff-appellant in the court below, prays that a Writ of Certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit entered in this case.

OPINIONS BELOW

The opinion of the Seventh Circuit is not reported. A copy of this opinion or order is set out in Appendix 1.

JURISDICTION

The order of the Court of Appeals for the Seventh Circuit was entered on November 22, 1974.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTION PRESENTED

1. Was the Court of Appeals for the Seventh Circuit correct in affirming a Summary Judgment entered against petitioner in the United States District Court wherein said Appellate Court made factual determinations in affirming the District Court that were never at issue, nor relevant to the issues presented before said District Court, and directly opposite to the findings of fact made in an antedated state court proceeding?

STATEMENT OF THE CASE

The original appeal was by authority of 28 U.S.C., Sec. 1291, from a final decision of a United States District Court.

The petitioner corporation filed an Amended Complaint at Law in Two Counts. Pursuant to Rule 56 of the Federal Rules of Civil Procedure the Trial Court granted Summary Judgment on behalf of respondents, August C. Cepon, Alex Brebner and Lloyd Murrie, as to both Counts. Petitioner only asked for review concerning the Trial Court's entry of Summary Judgment as to Count II. Count I alleged a conspiracy charging a violation of petitioner's civil rights and was not relevant to this Appeal.

Count II of said Amended Complaint (App. 8-14) was brought pursuant to 28 U.S.C. Sec. 1343 (jurisdiction to redress deprivation of civil rights); 42 U.S.C. Sec. 1983 (relief when deprived of one's civil rights) and the 14th Amendment of the United States Constitution.

Count II charged, in substance, that respondents, as chairman and members of the Lake County Liquor Commission, arbitrarily, and discriminatorily employed the *State of Illinois Dram Shop Act,* Chap. 43, Secs. 94 through 194 (*Illinois Revised Statutes*) against the petitioner corporation by denying said corporation a license to sell alcoholic beverages in Lake County, Illinois.

Count II charged that said corporation was duly incorporated under Illinois Law and that Josephine Christofalos and George Christofalos, husband and wife, were said corporation's only stockholders.

Count II further charged that respondents, August Cepon, was Chairman of the Lake County Illinois Liquor Commission and that respondents, Alex Brebner and Lloyd Murrie, were members of said Commission.

Count II further charged that previous to July 23, 1970, petitioner corporation made application to dispense alcoholic beverages in Lake County, Illinois.

Said Count II further alleged specific provisions of said Dram Shop Act which provided for (1) the jurisdiction and power of the Liquor Commission over Liquor licenses issued within a given territory of the State. Chap. 43, Secs. 110 & 113 (*Illinois Revised Statutes*) and (2) the provisions which set out the persons or entities who were ineligible to dispense alcoholic beverages in the State, Chap. 43, Sec. 120 (*Illinois Revised Statutes*). Petitioner corporation, by statute, did not fall into a category of being "ineligible." No question was ever raised concerning the corporation's eligibility.

Paragraph 5 of said Count II specifically set out the manner and means employed by the respondents to deprive the petitioner corporation of a liquor license in violation of said corporation's civil rights and due process. Said paragraph 5 charged that said petitioner corporation was denied a license by respondents based solely on the ground that said Chairman of said Liquor Commission, August Cepon, "did not individually feel or believe that said stockholder, George Christofalos, or his family were entitled to a license to dispense alcoholic beverages in Lake County, Illinois"; and it was further charged in said paragraph 5 that respondents did obscure their true motives in the license denial, to wit, by promulgating and making public, that said corporation's liquor license was denied

because said Josephine Christofalos was not a resident in Lake County, Illinois, for two years previous to the time the corporation applied for the license. It was further alleged that respondents knew that said ground, made public and promulgated for the license denial, was unauthorized and contrary to Illinois Law as a reason to deny a liquor license to a corporation under said Chap. 43, Secs. 110, Ill. Rev. Stats.

The words and figures of said paragraph 5 are quoted as follows:

> "5. That on July 23, 1970, defendants, August Cepon, Alex Brebner and Lloyd Murrie, conducted a purported hearing under color of said law, wherein the application for said liquor license for plaintiff corporation was arbitrarily, wrongfully, discriminatorily and unlawfully denied based upon the ground that defendant, August Cepon, did not individually feel or believe that plaintiff, George Christofalos, and his family, were entitled to a license to dispense alcoholic beverages in Lake County, Illinois; that to obscure the true motives for said denial of said license, defendants fraudulently, wrongfully, and unlawfully promulgated and made public its reason, for said denial of license, was that plaintiff, Josephine Christofalos, principal stockholder of plaintiff corporation, was not a resident of said Lake County, Illinois, for two years previous to applying for the aforesaid license, when in truth and fact defendants knew that said assigned, promulgated and publicly declared reason was unauthorized under said Dram Shop Act, specifically said Chapter 43, Sec. 110, stated above, and was to conceal the true motives for denial of said license, which

was to carry out the individual feelings and beliefs of said August Cepon, as aforesaid stated."

The remainder of Count II prayed for actual and punitive damages to be awarded said corporation as a result of respondents' alleged violations.

Respondents filed a Motion To Dismiss the Amended Complaint. The Motion To Dismiss Count II, as to the petitioner corporation, was denied by the Trial Court in a Memorandum Opinion holding (1) that a corporation is entitled to due process of law in the application for a liquor license, and (2) that a corporation has a standing to sue under the Federal Civil Rights Act in preserving "its rights under the due process and equal protection clauses of Section 1 of the Fourteenth Amendment," and (3) that said Count II states a cause of action against the respondents.

Respondents filed an Answer to Count II of the Amended Complaint.

Respondents filed a Motion for Summary Judgment in their favor pursuant to Rule 56 of the Federal Rules of Civil Practice. The only grounds stated in said Motion for Summary Judgment concerned the petitioner corporation's inability to produce certain records to support expenses and receipts on the damage issue of claimed lost profits.

Respondents further stated that the petitioner corporation failed to establish the alleged expenditure of legal fees incurred during petitioner corporation's pursuit of its administrative remedies to ultimately obtain a liquor license in the Illinois Courts, in that petitioner corporation failed to produce invoices or cancelled checks.

Petitioner filed a Reply to respondents' Motion for Summary Judgment. Included in the Reply were excerpts from

the statements or colloquy of July 23, 1970, taken before the Lake County Liquor Commission in the matter of the application for a liquor license by said corporation. The record of said proceedings was attached as an exhibit wherein the respondent, August Cepon, states that the corporation is not to have a license because of his feelings toward said George Christofalos. The Reply further showed that, in Discovery Depositions, respondents, August Cepon and Lloyd Murrie, both testified under oath that the denial of the corporate liquor license was because of the background of George Christofalos.

The Reply further showed that both the Lake County Liquor Commission and the State of Illinois Liquor Commission were reversed by the Circuit Court of Cook County, Illinois, in General No. 70 L 17611 and that the liquor authorities were ordered to issue a liquor license to the corporation. It was further shown that said order was not appealed from and was final.

In addition, said Reply included the statement under oath of George Christofalos showing monthly gross sales from the corporate business diminished from $16,337.50 to $10,936.77 over a seven month period following said denial of said corporate license; and that a total of $8,000.00 was paid to three separate law firms in order to obtain said liquor license by way of Illinois Administrative Procedures.

The Trial Court allowed respondents' Motion for Summary Judgment, entering judgment for respondents, August Cepon, Alex Brebner and Lloyd Murrie, on November 21, 1973, by way of a Memorandum Opinion (App. 18-22) holding that actions of the respondents were ". . . overly zealous and intemperate, they do not show an arbitrary,

discriminatory and unlawful denial of the liquor license to the plaintiff . . ." Petitioner had requested a jury trial.

The District Court's Memorandum Opinion did not reach the grounds raised by respondents in their Motion for Summary Judgment, to wit: the corporate petitioner's lack of records to substantiate income and expenditures; the trial court held that there was no question of fact presented on an arbitrary or discriminatory denial of said license as stated above.

Petitioner corporation's said Reply showed by verbatim testimony taken on July 23, 1970, that said corporation did not obtain its license because of respondent, August Cepon's, antagonism towards a stockholder, George Christofalos.

Testimony quoted below raised a question of fact, under said complaint as follows:

1. That the real reason for denying corporate license was based on antagonism toward said George Christofalos and his family, and

2. The reason promulgated for the denial of Petitioner's license, and made of record, was promulgated as a subterfuge.

EDITOR'S NOTES

The Chairman set out in the quotes below referred to the respondent, August Cepon. Mr. Pease, referred to below, was the attorney representing the petitioner corporation. Mr. Brebner and Mr. Murray, co-respondents, were the other members of the local commission. Mr. Hopkins is a manager of the corporate plaintiff. Mr. Reese is the Assistant State's Attorney representing Lake County, Illinois.

"The Chairman: I'll give you a good frank answer, Mr. Pease.

He's not going to get a license under no condition; I don't want no part of him, and I don't want him to be even part of a four per cent, so he's not going to get a license . . .

The Chairman: I don't want no part of him at all, and he's not going to have it.

With the investigation that we've made so far, we definitely are not going to issue a license to no part of this agreement or anything else, so definitely he's out—no use trying, because we're not going to give him a license, and I don't want no part of this family at all to be involved in this thing at all.

They're not going to get a license under no condition . . .

So that there's other recourse, I don't know, I don't know what Mr. Brebner or Mr. Murrie have in mind, or our attorney, Mr. Reese, but this is my stand, and this is the way that I'm going to hold it, and there's no license going to be issued to this corporation.

In fact, I'm going to close it up, that's for sure, under the circumstances right today . . .

Mr. Pease: To clarify for myself, your reasons of refusal, I take it that it is as to any interest that Mr. Christofalos might have here in this corporation.

That is the reason for the refusal?

The Chairman: Yes, I made myself clear.

I don't want this man to have anything to do with it at all.

I'm sure that no matter how this thing would work out—it could be transferred—it could be a corporation—this man is still going to be on the premises . . .

He's through and I don't want no part of him . . ."

However, the quotes below, recorded at the same hearing on July 23, 1970, show that respondents knew that their actions were illegal: the corporate license was not denied because George Christofalos and his "family" were stockholders in said petitioner-corporation, but they denied petitioner's license for another reason, equally illegal under Illinois law: that said George Christofalos' wife was not a resident of Lake County, Illinois, for two years before the license was applied for in that the law of Illinois stated that an entity could not be made ineligible by County law when said entity was eligible under State Statute. (App. 10) The testimony was as follows:

"... Isn't that true, hasn't George Christofalos been in there every day?

Mr. Hopkins: Yes.

The Chairman: And he's working behind the bar?

Mr. Hopkins: No, he isn't.

The Chairman: What is he doing there?

Mr. Hopkins: Well—

The Chairman: In fact, you haven't a license today. You haven't had a license since July 1st?

Mr. Hopkins: Yes.

The Chairman: You're operating illegally. Who's paying him?

Mrs. Christofalos: I pay him.

The Chairman: You're paying him now?

Mrs. Christofalos: Yes.

The Chairman: Okay, so that proves too that she's paying him so that Christofalos has an interest, which is illegal.

Mr. Pease: Mr. Cepon is quite correct, the arrangement making Mr. Hopkins manager was only arrived at by resolution of July 7th.

Prior to that it was George Christofalos running the business.

The Chairman: Correct.

I'd like to make a motion then made that this will be official and all that, and I certain—

It will be a matter of filing.

Mr. Reese: Did you withdraw the previous application or what?

Mr. Pease: The previous application was withdrawn.

All I want to do is to file some of these corporate papers.

Mr. Reese: I see no problem in that, Mr. Cepon.

Mr. Brebner: I will make a motion that the license be denied in view of the fact that Mrs. Christofalos is not a resident.

Mr. Murrie: Seconded. I will second the motion.

The Chairman: Moved by Mr. Brebner and seconded by Mr. Murrie that the license be denied.

All those in favor signify by saying aye.

Mr. Brebner: Aye.

Mr. Murrie: Aye.

The Chairman: Aye.

Motion carried."

The above quotes showed a violation of 42 U.S.C. 1983 which provides as follows:

"§1983. Every person who, under color of any statute, ordinance, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (RS §1979.)"

The fact that plaintiff corporation was denied a liquor license because of said defendant, August Cepon's feelings against George Christofalos is sufficient to be a violation of the corporation's civil rights.

It was shown to the Appellate Court that if a liquor licensing authority can deny a corporation the right to do business only because of a personal antagonism toward a stockholder in the corporation, then there is in existence no objective standards or criteria to satisfy an order to obtain a liquor license, and such a situation has been held to be a violation of the Federal Civil Rights Act, 42 U.S.C. 1983. *Hornsby* v. *Allen,* CA5 (Ga), 326 F.2d 605 (1964), *Barnes* v. *Merritt,* CA5 (Ga), 376 F.2d 8 (1967).

Further, to deny the corporation a license because the Chairman of the Liquor Commission wants no part of George Christofalos or "his family" (App. 89-90) presents no reason at all for the denial, and is analogous to the denial of a liquor license only because of "political reasons", held to be a violation of said Section 1983. *Glicker* v. *Michigan Liquor Control Commission,* CA6 (Mich), 160 F.2d 96 (1947).

Further, to deny the corporate liquor license on the ground of antagonism to a stockholder would leave no criteria or standards in which to appeal the decision of the local liquor authority, and the latter has been held to be a violation of said Section 1983 and the Due Process Clause of the 14th Amendment. *Hornsby* v. *Allen,* CA5 (Ga), 326 F.2d 605 (1964) (cited above).

The allegations stated in paragraph 5 of the Complaint were proven. There was not even a factual dispute, nor was there a basis for the trial court's granting the Motion for Summary Judgment as to Count II of the Amended

Complaint. Even if the trial court had some doubt as to the meaning of the words employed by the respondent, August Cepon, on a motion for summary jugdment, that doubt as to the existence of a genuine issue as to the material fact of arbitrary conduct and discrimination should have been resolved against the parties moving for summary judgment. *Chesapeake and Ohio Railway Company* v. *International Harvester Company,* CA7, 272 F.2d 139 (1959).

The Appellate Court filed an Appellate Order affirming the Order of the District Court allowing the respondents Motion for Summary Judgment and made the following finding of facts in an attempt to show that the respondents had not violated said Federal Civil Rights Act:

(a) "that George Christofalos was guilty of 'tampering with an auto'" (App. 3)

(b) "that he had falsely denied this criminal conviction in petitioner's application for the liquor license," (App. 3) and

(c) "that respondents had some tangible evidence of the background of George Christofalos when the corporate license was denied on July 23, 1970." (App. 4)

Said findings of fact came as a shock to petitioner and his attorney in that the matters found to be fact were never litigated in the District Court, by way of testimony or pleadings.

It was respectfully submitted to the Appellate Court that the respondents never raised said issues because respondents knew that said issues had already been resolved against respondents at the time the Circuit Court of Cook County entered an Order on respondents herein to issue a liquor license to this petitioner in a cause of action entitled *Randy's House of Steele, Inc., an Illinois corporation*

v. *Illinois Liquor Control Commission, Donald G. Adams, Chairman; August Cepon, Local Liquor Control Commissioner of Lake County,* General No. 70 L 17611. If petitioner, or his attorneys, had any warning whatsoever that the Appellate Court was about to fall into error that it fell into, they could have supplied the Report of Proceedings made in said State Court hearing, but was never requested or allowed to so supply or file with the Appellate Court.

Further petitioner illustrated to the Appellate Court that Federal Courts follow state laws, decisions and factual findings with respect to the issuance or denial of licenses, with the exception of U.S. Constitutional considerations (Due Process, Equal Protection, etc.). *Douglas* v. *Noble,* 43 S. Ct. 303, 261 U.S. 165, 67 L.Ed. 590 (1922); *Steinbach* v. *Metzger,* C.C.A. Pa., 63 F.2d 74 (1930).

Petitioner was unable to obtain said Report of Proceedings from the Clerk of the Circuit Court of Cook County, Illinois, within the fourteen day period provided for under Rule 40 of the Rules of the United States Court of Appeals for filing a Petition for Rehearing. Said Report of Proceedings was not obtained or certified by Petitioner or his attorney from November 25 until December 17, 1974, for the reason that said Report of Proceedings had been misfiled by the Clerk of the Circuit Court. The inability of petitioner to obtain said Report of Proceedings, and the difficulties encountered, was all set out in two lengthy Affidavits signed by the attorney representing the petitioner in this appeal. (App. 23-29) Said attorney stated in his affidavit that Petitioner, nor said attorney, could recollect the exact contents of said transcript, and without the actual Report of Proceedings at hand, no valid representations could be made to the Appellate Court during said fourteen

day period following the entry of the Appellate Court Order so as to move the Appellate Court to extend time for filing a Petition for Rehearing. Said affidavits showed that it was necessary said attorney obtain and read said Report of Proceedings in order to compare the findings of fact made therein with the findings made by the Appellate Court. However, after comparison, petitioner attempted to file a printed Petition for Rehearing (App. 37-46), and said Affidavits in Support of filing said Petition for Rehearing on two occasions:

1. On December 31, 1974, petitioner filed a Motion to file said Report of Proceedings, certified, marked as Appellant's Appellate Exhibit No. 1, and further moved that said Exhibit No. 1 be designated as a Supplemental Appendix. Along with said Motion respondent filed a nine page printed Petition for Rehearing. Said Petition for Rehearing set out verbatim the findings of the state court made over thirty-six months previous to the Appellate Order at issue herein, and never appealed from, that were exactly opposite to the findings of fact made in said Appellate Order.

On January 8, 1975, the Appellate Court entered an order denying petitioner the right to file said certified Report of Proceeding based upon the ground that petitioner did not move to file said Report of Proceeding "instanter", and further that petitioner failed to move to extend said fourteen day period to file a Petition for Rehearing. Said Order further directed the Clerk of the Appellate Court to return all materials filed on December 31, 1974, to petitioner. (App. 33-34)

2. On January 17, 1975, in order to cure the defects of procedure raised in said Appellate Order of January 6,

1975, petitioner moved the Court to file "instanter" said certified copy of the Report of Proceeding, with a more detailed supporting affidavit: said Petition for Rehearing, and a motion to enlarge the time to file a Petition for Rehearing to January 17, 1975, pursuant to Rule 26 (b) of the Federal Rules of Appellate Procedure, and in addition attached excerpts from the case of *Braniff Airways, Inc.* v. *Curtiss-Wright Corp.*, (CA2d, 1970) 424 F.2d 427, Cert. Denied (1970) 400 U.S. 829, 91 S. Ct. 59, 27 L.ed. 2d 59, pages 428-430, showing that a Petition for Rehearing can be entertained, regardless that a motion was not made within said fourteen day period, and even after a Petition for Rehearing has been denied, and even as long as six months after an appellate decision has been rendered. (App. 32)

On January 28, 1975, the Appellate Court denied petitioner the right to file said Report of Proceedings and further denied petitioner its motion to enlarge the time to file its Petition for Rehearing. The Petition for Rehearing was never ruled upon. (App. 35-36)

REASONS FOR GRANTING THE WRIT

On July 23, 1970, the defendants-respondents, particularly August C. Cepon, denied the corporate petitioner a liquor license for arbitrary reasons demonstrated in this Petition for Writ of Certiorari as follows, quoting the words of respondent, August Cepon, at said hearing:

1. "He's not going to get a license under no condition".

2. "I don't want no part of him at all, and he's not going to have it. . . . They're not going to get a license under no condition. . . ."

3. "In fact, I'm going to close it up, that's for sure, under the circumstances right today. . . ."

4. Mr. Pease: To clarify for myself, your reasons of refusal, I take it that it is as to any interest that Mr. Christofalos might have here in this corporation. That is the reason for the refusal?

The Chairman: Yes, I made myself clear.

5. "He's through and I don't want no part of him. . . ."

A Circuit Court, sitting in the State of Illinois, made a finding of fact that the respondents herein acted arbitrarily, discriminatorily and illegally. (App. 44-45)

There is little doubt that the defendants denied the corporate license because of defendant's animosity to George Christofalos, and his family, as charged in paragraph 5 of the Complaint herein. No other reason was stated or given on July 23, 1970.

There was some intimation that respondents had conducted some sort of investigation previous to the liquor license being denied the corporation, however, it was found as a matter of fact by the Judge of the Circuit Court of Cook County, Illinois, on Administrative Review of all proceedings had before respondents at the local liquor commission and the State of Illinois Liquor Commission, that respondents had not conducted any investigation before the license was denied (App. 43), nor did said George Christofalos have an opportunity for any hearing concerning any wrongdoing alluded to at the time the corporate license was denied. In other words, George Christofalos, his family, or the corporation, were not given any objective standards or criteria to satisfy the laws of the State of Illinois in order to obtain a liquor license, and such conduct amounted to a violation of the Federal Civil Rights Act, 42 U.S.C. Sec. 1983. *Hornsby* v. *Allen,* CA 5 (Ga), 326 F.2d 605 (1964), *Barnes* v. *Merritt,* CA 5 (Ga), 376 F.2d 8 (1967). Nor was there any established criteria or standard made at said hearing in which to appeal the decision of the local liquor authority. Again, a violation of said Sec. 1983, and the due process clause of the 14th Amendment of the United States Constitution. *Hornsby* v. *Allen.* CA 5 (Ga), 326 F.2d 605 (1964) (cited above).

There is no reported decisions in the 7th Circuit, United States Court of Appeals, concerning the Federal Civil Rights Act as it relates to a denial of a liquor license by a state licensing authority. The Appellate Order entered by the 7th Circuit of the United States Court of Appeals on November 22, 1974, results in a holding diametrically opposed to the holdings and philosophies clearly stated in the 5th and 6th Circuits of the United States Court of Appeals. *Hornsby* v. *Allen* and *Barnes* v. *Merritt, supra.* A summary judgment should not have been granted.

However, the real error is the refusal of the 7th Circuit to correct a grievous error after being brought to its attention. It is obvious that there was an injustice done in the District Court herein, and to rehabilitate the status of their record made in the District Court, the Seventh Circuit found itself expanding its jurisdiction when affirming the District Court by making its own findings of fact, on issues not even raised in the District Court, that said George Christofalos was guilty of

1) Tampering with an auto (App. 3),

2) falsely denied this criminal conviction on respondent's application for the liquor license (App. 3), and

3) That "Cepon" had some credible evidence of the background of George Christofalos, when the corporate license was denied on July 23, 1970. (App. 4)

Regretfully, when Petitioner filed its Petition for Rehearing showing the 7th Circuit that its factual findings had been litigated in the Circuit Court of Cook County, Illinois, three years previous, with findings absolutely opposite from the findings made by the 7th Circuit, never appealed from by the Respondents herein, the 7th Circuit would not even entertain the Petition for Rehearing, and denied Petitioner the right to even file a certified copy of the State Court's Report of Proceedings showing the 7th Circuit its error.

The State Court found, as a matter of fact and law, that (1) George Christofalos was not guilty of tampering with an auto (App. 40-42), (2) that George Christofalos had not falsely denied the criminal conviction on Petitioner's application for the liquor license (App. 42-43), and (3) that respondents had no credible evidence of a

nefarious background of George Christofalos when the corporate license was denied. (App. 43-44) It was further clearly shown to the Appellate Court in said Petition for Rehearing that the Appellate Court, along with the District Court, had no authority sitting in the State of Illinois, to make factual findings, heretofore litigated in said State Court, on the well established legal principle of res judicata. *Wright* v. *Georgia R.R. & Banking Co.* (1910) 216 U.S. 420, 30 S.Ct. 242, 54 L.ed. 544; *Covington* v. *First National Bank of Covington* (1905) 198 U.S. 100, 255 Ct. 562, 49 L.ed. 963; Moore's Federal Practice, Vol. 1A, sec. 0.302(4), p. 3025.

Petitioner cited and attached excerpts from the Supreme Court case of *Braniff Airways, Inc.* v. *Curtiss-Wright Corp.*, (CA 2d, 1970) 424 F.2d 427, Cert. Denied (1970) 400 U.S. 829, 91 S.Ct. 59, 27 L.ed. 2d 59, pages 428-430, holding that a Petition for Rehearing may be entertained as long as six months after an Appellate Decision, notwithstanding the fourteen day provision stated in the United States Appellate Rule.

CONCLUSION

The 7th Circuit, United States Court of Appeals, has rendered an opinion which, in effect, established itself as an arm of the Illinois Administrative Review Board, by acting as a fact finding agency. It exceeded its jurisdiction as an Appellate Court and has, in fact, established a new criterion to guide the Courts of Illinois as to criteria or standards in issuing liquor licenses in Illinois. Under the holding of *Douglas* v. *Noble,* 43 S.Ct. 303, 261 U.S. 165,

67 L.ed. 590 (1922) and *Steinbach* v. *Metzger,* C.C.A. Pa., 63 F.2d 74 (1930), the 7th Circuit was in error in re-litigating as issues, conduct of George Christofalos and respondents herein that were never raised in the District Court, and already having been found by a State Court of Illinois to be unlawful and discriminatory.

It is prayed that a writ of certiorari to review the Order and Judgment of the Circuit Court and the 7th Circuit, United States Court of Appeals, be issued.

Respectfully submitted,

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APPENDIX 1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

"Unpublished Order" Not to be cited, er Circuit Rule 23.

Argued November 18, 1974

November 22, 1974

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. JOHN PAUL STEVENS, Circuit Judge

Hon. CHARLES EDWARD WYZANSKI, JR., Senior District Judge*

RANDY'S HOUSE OF STEELE, INC., an Illinois corporation, Plaintiff-Appellant,

No. 74-1084 vs.

AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE, Chairman and Members of the Liquor Commission of Lake County, Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 72 C 1797

Abraham L. Marovitz, Judge

ORDER

Plaintiff brought this civil rights action against defendants, the chairman and individual members of the Lake County Liquor Commission. Relying upon Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964), plaintiff alleged that defendants had violated the Fourteenth Amendment and 42 U.S.C. § 1983 when they arbitrarily denied it a liquor license.1/

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* Senior District Judge Charles Edward Wyzanski, Jr., of the District of Massachusetts, is sitting by designation.

1 Fairly construed, the complaint alleged only a deprivation of what has been termed "substantive due process," i.e., that plaintiff was denied a license for a reason "so inadequate that the judiciary will characterize it as 'arbitrary.'" See Jeffries v. Turkey Run Consolidated School Dist., 492 F.2d 1, 4 (7th Cir. 1974).

The district court granted defendant's motion for summary judgment.[2] We affirm.

Plaintiff's case rests upon certain statements made by the chairman of the Liquor Commission, August Cepon, during the July 23, 1970, hearing on its license application. Cepon had repeatedly remarked that under no circumstances would the Commission grant a license to any corporation of which George Christofalos[3] was a part.[4] According to

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2 Defendants sought summary judgment on the ground that plaintiff suffered no damage; the district court, however, granted the motion on the ground that defendants' actions were not violative of the Fourteenth Amendment and § 1983. Plaintiff makes no contention that, had the motion been predicated upon the latter ground, it would have offered any additional evidence to demonstrate that an issue of material fact existed or that defendants were not entitled to judgment as a matter of law.

3 On its application for a license (dated June 23, 1970), plaintiff listed George Christofalos as its president and majority shareholder (he apparently owned 960 shares and his wife the remaining 40 shares). At some time prior to the hearing, Christofalos transferred 920 shares to his wife.

4 For example, Cepon stated:

"I'll give you a good frank answer, Mr. Pease.

"He's not going to get a license under no condition; I don't want no part of him, and I don't want him to be even part of a four per cent, so he's not going to get a license . . . .

"I don't want no part of him at all, and he's not going to have it.

"With the investigation that we've made so far, we definitely are not going to issue a license to no part of this agreement or anything else, so definitely

(Continued next page.)

plaintiff, these statements demonstrate that it was denied the right to do business solely because of Cepon's personal antagonism toward Christofalos and that such a denial is arbitrary and capricious.

It is undisputed, however, that Christofalos had been arrested several times by federal and state authorities, that, after having been charged with larceny of an automobile, he pleaded guilty to tampering with an automobile and was sentenced to six months in Cook County Jail, and that he had falsely denied this criminal conviction on plaintiff's application for the liquor license. Contrary to plaintiff's contention, the record establishes that the "antagonism" exhibited by Cepon was

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4 (Continued)

> he's out—no use trying, because we're not going to give him a license, and I don't want no part of this family at all to be involved in this thing at all.
>
> "They're not going to get a license under no condition ....
>
> "So that there's other recourse, I don't know, I don't know what Mr. Brebner or Mr. Murric have in mind, or our attorney, Mr. Reese, but this is my stand, and this is the way that I'm going to hold it, and there's no license going to be issued to this corporation.
>
> "In fact, I'm going to close it up, that's for sure, under the circumstances right today ...."

App. 104-06.

predicated solely upon these facts;[5] there is nothing in this

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5 On pages 81-83 of August Cepon's deposition, taken May 21, 1973, the following testimony is given:

Q Will you please tell us what investigation you had made previous to July 23, 1970?

A We had a report from the F.B.I. through his fingerprints just as anybody that ever applies for a license to get his fingerprints, and we had got the information back with this man's background, and all that, and we decided, and I did too, that he was not the type of a person that I would issue a license to.

Q Was that report from the F.B.I. by telephone or did you have a report in writing from the F.B.I.?

A We got it in writing.

Q Do you have that -- did you have that in writing previous to July 23, 1970?

A I couldn't remember the date at all. We must have had it before we denied it, yes.

Q You had it in writing?

A Correct.

* * *

Q From your own recollection, Mr. Cepon, will you tell us what reason there was for the denial of the liquor license of Randy's House of Steele on July 23, 1970?

A After we got the report back -- he wasn't a citizen, and then the police report and F.B.I. report, from that report we decided that we would deny the license.

(Continued next page.

record which indicates to the contrary.

The Illinois Liquor Control Act provides in part that a license "shall not" be issued to a corporation if any officer thereof "is not of good character and reputation in the community in which he resides...." Ill. Rev. Stat. Ch. 43, §§ 120 (2) & (10). Given the above facts and the broad authority which the states possess in the regulation of alcohol,[6] it would not be unreasonable to conclude that plaintiff failed to satisfy this requirement. Under these circumstances, we cannot say that defendants acted "arbitrarily" in denying plaintiff a license.[7]

We recognize that the state circuit court eventually reversed defendants' denial of a license.[8] However, the issues

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5 (Continued)

Q And as I understand the reason for denial of the license was because of the character of George Christofalos, is that correct?

A Right.

6 See U. S. Const. amend. XXI; California v. LaRue, 409 U.S. 109.

7 It might be noted that, in Hornsby, supra, the plaintiff alleged that

"although she met all the requirements and qualifications, as to moral character of the applicant and proposed location of the store, prescribed for the holder of a retail liquor dealer's license, her application was denied 'without a reason therefor' by the Mayor and Board of Aldermen. This action is characterized as 'arbitrary' ...."

326 F.2d at 607.

8 Defendants' action was affirmed by the state Liquor Commission before the state court reversed. During oral argument, the state's attorney, who represents defendants, explained that the court's decision was "inadvertently" not appealed.

of whether a board acted arbitrarily within the proscription of the Fourteenth Amendment and whether it acted in conformity with state law are not always the same. As the Fifth Circuit concluded in Hornsby, supra:

> "The proper question to be determined upon the hearing of this case in the district court is not whether the plaintiff below is entitled under the law to a liquor license. The determination of whether she should be granted one is a function of the Aldermanic Board. The role of the courts is to ascertain whether the manner in which this determination was or is made accords with constitutional standards of due process and equal protection."

326 F.2d at 612. Plaintiff has failed to establish that the basis of the state court's decision was defendants' arbitrary (as a matter of federal law) rather than simply mistaken (as a matter of state law) conduct.

Finally, during oral argument plaintiff's counsel stated that the matter of George Christofalus' character was not explored at the July 23 hearing and, therefore, that defendants' decision could not be upheld on the basis of facts relating to this character. It appears that the reason formally given for the license denial was that Mrs. Christofalos was not a resident of Lake County.[9] However, our reading of the excerpts from the hearing transcript which are part of the record[10] persuades us that

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9 It is not disputed that this ground is insufficient under Illinois law.

10 The entire transcript is not part of the record. It is, therefore, impossible to determine whether more specific references to Christofalos' criminal record were made.

Christofalos' character was clearly an issue at the hearing and that plaintiff had an adequate opportunity to respond with respect to this issue.11/

The decision of the district court granting defendants' motion for summary judgment is therefore

AFFIRMED.

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11 For example, Cepon stated that, based upon "the investigation that we have made so far," a license would not be issued to any corporation of which Christofalos had any part. App. 105. Plaintiff's attorney later remarked:

> "To clarify for myself, your reasons of refusal, I take it that it is as to any interest that Mr. Christofalos might have here in this corporation.
>
> "That is the reason for your refusal?"

App. 106. Cepon responded: "Yes, I made myself clear." App. 106. With reference to Mrs. Christofalos' residency, plaintiff's attorney queried: "That is also part of your decision?" App. 107 (emphasis added).

It might also be noted that, in its reply brief at p. 2, plaintiff stated: "The character assassination of George Christofalos was performed at the hearing ...."

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RANDY'S HOUSE OF STEELE, INC., an Illinois Corporation; GEORGE CHRISTOFALOS and JOSEPHINE CHRISTOFALOS, Husband and Wife,	)	
Plaintiffs,	)	
vs.	)	No. 72 C 1797
AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE, Chairman and Members of the Liquor Commission of Lake County, Illinois; ROBERT POST, Executive Director of the Illinois Crime Commission, and NORMAN REESE, Assistant States Attorney of Lake County, Illinois,	)	
Defendants.	)	

AMENDED COMPLAINT AT LAW

COUNT II

I

That the plaintiff, RANDY'S HOUSE OF STEELE, INC., an Illinois Corporation; GEORGE CHRISTOFALOS and JOSEPHINE CHRISTOFALOS, Husband and Wife, and said corporation's only stock holders, for the second Count bring this action pursuant to 28 U.S.C. Sec. 1343, 42 U.S.C. 1983 and the 14th Amendment of the United States Constitution to redress plaintiffs' deprivation of their civil rights complaining that defendants, AUGUST CEPON, ALEX BREBNER and LLOYD MURRIE, arbitrarily, wrongfully and discriminatorily invoked and used the State of Illinois Dram Shop Act, Chap. 43, Sec. 94 through 195, Illinois Revised Statutes (1969) against plaintiffs by denying plaintiff corporation a license to sell alcoholic beverages in[illegible] County, Illinois.

II.

1. That on June 26, 1970 plaintiff, RANDY'S HOUSE OF STEELE, INC., was incorporated under the laws of the State of Illinois, that plaintiffs, JOSEPHINE CHRISTOFALOS and GEORGE CHRISTOFALOS, Husband and Wife, owned 960 and 40 shares respectively representing

the total ownership of plaintiff corporation during all the proceedings involved as herein stated.

2. That at all times mentioned herein, defendants were duly elected or appointed officials under the laws of the State of Illinois and Lake County, Illinois and at all times mentioned herein did act in their official capacities to-wit: AUGUST CEPON, as Chairman, and ALEX BREBNER and LLOYD MURRIE, as members of the Liquor Commission of Lake County, Illinois.

3. That previous to July 23, 1970 plaintiff corporation did make application for a liquor license to operate a restaurant and bar to dispense alcoholic beverages in Lake County, Illinois.

4. That at all times mentioned herein said Dram Shop law did provide the following:

"110. JURISDICTION OVER RETAIL SELLING IN CITY COUNCILS, BOARD OF TRUSTEES AND COUNTY BOARDS — WOMEN AND MINORS] § 1. In every city, village or incorporated town, the city council or president and board of trustees, and in counties in respect of territory outside the limits of any such city, village or incorporated town the county board shall have the power by general ordinance or resolution to determine the number, kind and classification of licenses, for sale at retail of alcoholic liquor not inconsistent with this Act...and to establish such further regulations and restrictions upon the issuance of and operations under local licenses not inconsistent with law as the public good and convenience may require; and to provide penalties for the violation of regulations and restrictions, including those made by county boards, relative to operation under local licenses; provided, however, that in the exercise of any of the powers granted in this section, the issuance of such licenses shall not be prohibited except for reasons specifically enumerated in Sections 2, 8, 8a and 21 of Article VI of this Act. As amended by act approved June 10, 1957. L.1957, P.682."

"113. EXAMINATION OF APPLICANT FOR LOCAL LICENSE] §4. The local liquor control commissioner shall have the right to examine, or cause to be examined under oath, any

applicant for a local license or for a renewal thereof, or any licensee upon whom notice of revocation or suspension has been served in the manner hereinafter provided, and to examine or cause to be examined, the books and records of any such applicant or licensee; to hear testimony and take proof for his information in the performance of his duties, and for such purpose to issue subpoenas which shall be effective in any part of this State. For the purpose of obtaining any ofthe information desired by the local liquor control commissioner under this section, he may authorize his agent to act on his behalf. As amended by act approved July 14, 1955. L.1955, p.1971."

"120. PERSONS INELIGIBLE TO LICENSE. §2. No license of any kind issued by the State Commission or any local commission shall be issued to:

(1) A person who is not a resident of any city, village or county in which the premises covered by the license are located; except in case of railroad or boat licenses;

(2) A person who is not of good character and reputation in the community in which he resides;

(3) A person who is not a citizen of the United States;

(4) A person who has been convicted of a felony under any Federal or State law;

(5) A person who has been convicted of being the keeper or is keeping a house of ill fame;

(6) A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality;

(7) A person whose license issued under this Act has been revoked for cause;

(8) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(9) A copartnership, unless all of the members of such copartnership shall be qualified to obtain a license;

(10) A corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license hereunder for any reason other than citizen ship and residence within the political subdivision;

(10a) A corporation unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the Illinois Business Corporation Act to transact business in Illinois;

(11) A person who place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required by the licensee;

(12) A person who has been convicted of a violation of any Federal or State law concerning the manufacture, possession or sale of alcoholic liquor, subsequent to the passage of this Act or has forfeited his bond to appear in Court to answer charges for any such violation;

(13) A person who does not beneficially own the premises for which a license is sought, or does not have a lease thereof for the full period for which the license is to be issued;

(14) Any law enforcing public official, any mayor, alderman or member of the city council or commission, any president of the village board of trustees, any member of a village board of trustees, or any president or member of a county board; and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic liquor;

(15) A person who is not a beneficial owner of the business to be operated by the licensee;

(16) A person who has been convicted of a gambling offense as prescribed by any of subsection (a) (3) through (a) (10) of Section 28-1 of, or as prescribed by Section 28-3 of, the "Criminal Code of 1961", approved July 28, 1961, as heretofore or hereafter amended, or as prescribed by a statute replaced by any ofthe aforesaid statutory provisions;

(17) A person to whom a federal gaming device stamp or a federal wagering stamp has been issued by the federal government for the current tax period;

(18) A copartnership to which a federal gaming device stamp or a federal wagering stamp has been issued by the federal government for the current tax period, or if any of the partners have been issued a federal gaming device stamp or federal wagering stamp by the federal government for the current tax period;

(19) A corporation, if any officer, manager or director

thereof, or any stockholder owning in the aggregate more than 20% of the stock of such corporation has been issued a federal gaming device stamp or a federal wagering stamp for the current tax period;

(20) Any premises for which a federal gaming device stamp or a federal wagering stamp has been issued by the federal government for the current tax period. As amended by Act approved Sept. 12, 1968 L.1968. p.568.

Approved Sept. 12, 1968?

5. That on July 23, 1970, defendants, AUGUST CEPON, ALEX BREBNER and LLOYD MURRIE, conducted a purported hearing under color of said law wherein the application for said liquor license for plaintiff corporation was arbitrarily, wrongfully, discriminatorily and unlawfully denied based upon the ground that defendant, AUGUST CEPON, did not individually feel or believe that plaintiff, GEORGE CHRISTOFALOS, and his family, were entitled to a license to dispense alcoholic beverages in Lake County, Illinois; that to obscure the true motives for said denial of said license, defendants fraudulently, wrongfully, and unlawfully promolgated and made public its reason for said denial of license was that plaintiff, JOSEPHINE CHRISTOFALOS, a principal stock holder of plaintiff corporation was not a resident of said Lake County, Illinois for two years previous to applying for aforesaid license when in truth and fact defendants knew that said assigned, promolgated and publicly declared reason was unauthorized under said Dram Shop Act, specifically said Chapter 43, Sec. 110, stated above, and was to conceal the true motives for denial of said license, which was to carry out the individual feelings and beliefs of said

AUGUST CEPON, as aforesaid stated.

6. That as a direct and proximate result of said wrongful acts, plaintiffs did expend great sums of money for Court costs and legal fees in order to obtain said license (under due process of law) and lost profits all to the plaintiffs' damage in the sum of TEN THOUSAND ($10,000.00) DOLLARS.

7. That in the interest of society for the citizens of the State of Illinois and as a deterance of the unlawful conduct stated above by officials of the State of Illinois and Lake County, Illinois, exemplary damages in the amount of TWO HUNDRED FIFTY THOUSAND ($250,000.00) DOLLARS should be awarded plaintiffs against defendants, jointly and severally.

III.

WHEREFORE, plaintiffs, RANDY'S HOUSE OF STEELE, INC., an Illinois Corporation, GEORGE CHRISTOPALOS and JOSEPHINE CHRISTOPALOS, pray judgment against defendants, AUGUST CEPON, ALEX BREBNER and LLOYD MURRIE, jointly and severally, in the amount of TEN THOUSAND ($10,000.00) DOLLARS and costs of this suit for actual damage suffered in this cause of action and further plaintiffs pray judgment jointly and severally against said defendants for exemplary damages in the amount of TWO HUNDRED FIFTY THOUSAND ($250,000.00) DOLLARS.

KAMIN, STANLEY & BALKIN

BY: Frank C. Stanley
FRANK C. STANLEY

KAMIN, STANLEY & BALKIN
188 West Randolph Street
Chicago, Illinois 60601
332-2722

APPENDIX 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
NOV 21 1973
H. STUART CUNNINGHAM
At ... o'clock
CLERK

RANDY'S HOUSE OF STEELE, INC., an Illinois Corporation; GEORGE CHRISTOFALOS and JOSEPHINE CHRISTOFALOS, husband and wife,

Plaintiffs,

vs.

AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE, Chairman and Members of the Liquor Commission of Lake County, Illinois; ROBERT POST, Executive Director of the Illinois Crime Commission, and NORMAN REESE, Assistant States Attorney of Lake County, Illinois,

Defendants.

NO. 72 C 1797

MEMORANDUM OPINION

Motion for Summary Judgment and Motion to Dismiss

This is an action for damages brought pursuant to 42 U.S.C. §1983 and the 14th Amendment arising out of the allegedly unlawful arrest of George Christofalos in futherance of a conspiracy to deny a liquor license to

plaintiff Randy's House of Steele (Count I) and the alleged unconstitutional denial of that liquor license (Count II).

A Memorandum Opinion on motions to dismiss was filed May 7, 1973 by this Court, and the defendants Cepon, Brebner, and Murrie now move for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on Counts I and II of the amended complaint on the grounds that no genuine issue as to any material fact exists and they are entitled to judgment as a matter of law. Defendant Post renews his motion to dismiss claiming he is not part of the alleged conspiracy.

In the prior opinion filed by this Court, we stated that we had "considered the various motions and the briefs filed both in support and opposition thereof and find no merit to defendants' contentions at this time. What must be kept in mind is that this case is before the court on a motion to dismiss and that the court must be satisfied that no set of facts can be proven by plaintiffs in support of its cause before the case may be dismissed and that great leeway is permitted at this juncture in considering

the sufficiency of the pleadings. We find that plaintiffs have alleged a set of facts regarding the unlawful denial of a liquor license and an illegal arrest adequate enough to withstand a motion to dismiss. Whether or not those allegations will be strong enough to survive scrutiny once discovery has been embarked upon and a motion for summary judgment is filed remains to be seen."

Now that discovery has been completed, defendants in their motion for summary judgment claim that no material issue of fact exists and that the evidence presented by the plaintiff George Christofalos as to Count I is insufficient as a matter of law to prove that a conspiracy existed among the defendants. In his depositions of May 21 and June 13, 1973, George Christofalos deposed that he learned of the alleged conspiracy in a phone conversation with Robert Post (Deposition of May 21, at p. 31) and that he saw defendants Cepon and Post walking together one afternoon before he was arrested (Deposition of June 13, at p. 39). This in essence is all the evidence plaintiff has to support his allegations of a conspiracy (Deposition of

June 13, at p. 41). It is apparent to this Court that, even if all that plaintiff says is taken as true, it is legally insufficient to prove such a conspiracy. The Court, therefore, grants defendants' motion for summary judgment as to Count I.

Defendants' motion for summary judgment on Count II is based upon plaintiff's inability to produce records which would show that damage was suffered because of the denial of the liquor license. The foundation question that must be answered before we reach the issue of damages is whether the denial of the liquor license by the Lake County Liquor Commission was indeed done in an unconstitutional manner.

Plaintiff corporation claims in Count II that the defendants Cepon, Brebner and Murrie, acting as individual members of the Lake County Liquor Commission, arbitrarily denied plaintiff a liquor license in violation of 42 U.S.C. §1983 and the 14th amendment. Plaintiff contends that the record of the license hearing before defendants evidences the arbitrary denial and he relies in part on the following

excerpt from the hearing. (The Chairman is defendant Cepon.)

"THE CHAIRMAN: I'll give you a good frank answer, Mr. Pease.

He's not going to get a license under no condition; I don't want no part of him, and I don't want him to be even part of a four per cent, so he's not going to get a license ...

THE CHAIRMAN: I don't want no part of him at all, and he's not going to have it.

With the investigation that we've made so far, we definitely are not going to issue a license to no part of this agreement or anything else, so definitely he's out --no use trying, because we're not going to give him a license, and I don't want no part of this family at all to be involved in this thing at all.

They're not going to get a license under no condition. I know that they're tried; Mr. Finn said that there was other ways and means of doing it.

I know that you're trying to be honest, and I think that you're trying to be fair. We also want to be fair. I want to be fair, but under the conditions that's existing at the present time, there's no way that we're going to issue a license, and this is the way that it is going to be.

So that there's other recourse, I don't know, I don't know what Mr. Brebner or Mr. Murrie have in mind, or our attorney, Mr.

Reese, but this is my stand, and this is the way that I'm going to hold it, and there's no license going to be issued to this corporation.

In fact, I'm going to close it up, that's for sure, under the circumstances right today ...

MR. PEASE: To clarify for myself, your reasons or refusal, I take it that it is as to any interest that Mr. Christofalos might have here in this corporation.

That is the reason for the refusal?

THE CHAIRMAN: Yes, I made myself clear.

I don't want this man to have anything to do with it at all.

I'm sure that no matter how this thing would work out --it could be transferred -- it could be a corporation--this man is still going to be on the premises...

There's no way other way out of it, I'm sure that he will, and this is the reason that I'm taking the stand that I'm taking because I don't want this man on the premises at all.

He's through and I don't want no part of him."

While these remarks by Commissioner Cepon are overly zealous and intemperate, they do not show an arbitrary, discriminatory and unlawful denial of the liquor license to the plaintiff.

Plaintiff claims that defendants Brebner and Murrie acted arbitrarily through their mere concurrence in the decision of denial of the license by Cepon. Since we do not find the behavior of Commissioner Cepon to be unlawful, we certainly find no wrong-doing in the concurrence of defendants Brebner and Murrie.

Defendants' motion for summary judgment on Count II is therefore granted because the Court finds that the denial of the liquor license to the plaintiff did not unconstitutionally deprive plaintiff of its civil rights or its rights under the 14th Amendment. This being the case, the Court need not reach the issue of damages and plaintiff's inability to produce records is now irrelevant.

Defendant Post's renewed motion to dismiss is also granted in light of the foregoing findings by the Court that the alleged conspiracy of which Post was to have been a member is non-existent; therefore, no liability to plaintiff accrues.

In summary, the Court grants defendants Cepon, Brebner and Murrie's motion for summary judgment on Counts I and II

and also grants defendant Post's renewed motion to dismiss.

ENTER:

Abraham Lincoln Marovitz

JUDGE

Dated: November 21, 1973

APPENDIX 4

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH DISTRICT

No. 74-1084

RANDY'S HOUSE OF STEELE, INC.,
an Illinois Corporation,

Plaintiff-Appellant,

-vs-

AUGUST C. CLPCK, ALEX BREBNER, LLOYD MURRIL, Chairman and Members of the Liquor Commission of Lake County,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
HONORABLE ABRAHAM L. MAROVITZ, Judge Presiding.

MOTION TO FILE A CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COMMON LAW RECORD AND REPORT OF PROCEEDINGS INSTANTER

KAMIN, STANLEY & BALKIN
188 West Randolph Street
Chicago, Illinois 60601
332-2722

FRANK C. STANLEY, of Counsel

Now comes Appellant, RANDY'S HOUSE OF STEELE, INC., an Illinois Corporation, by his attorneys, KAMIN, STANLEY & BALKIN, and in light of this Court's Order entered on January 8, 1975, ordering the Clerk of the Appellate Court to return a Report of Proceedings and Common Law Record by mail to Appellant without said material being filed with said Clerk, or considered by this Court in a Petition for Rehearing mailed to said Clerk on December 31, 1974, moves the Court to grant leave to Appellant to file instanter, Plaintiff's Appellate Group Exhibit No. 1, Certified copies of relevant portions and excepts of the Common Law record and a transcript of proceedings, enclosed herewith, arising in the Circuit Court of Cook County, Illinois, entitled Randy's House of Steel, Inc., an Illinois Corporation vs. Illinois Liquor Control Commission, Donald C. Adams, Chairman; August Cepon, Local Liquor Control Commissioner of Lake County, General No. 70 L 17611, and as grounds therefor respectfully shows:

1. That on November 22, 1974, this Court entered an Order affirming a Summary Judgment entered against Appellant by the U. S. District Court.

2. That said Appellate Order made findings of fact as follows: (a) that George Christofalos was guilty of "tampering with an automobile"; (b) "that he had falsely denied this criminal conviction on plaintiff's application for the liquor license", and; (c) that defendant, Cepon, had some tangible evidence of the alleged criminal background of George Christofalos when the corporate license was denied on July 22, 1970.

3. That said "findings of act" made by said Appellate Order

had never been made at any stage of this proceeding while pending before the U. S. District Court, nor had the matters found to be fact employed by the defense in it's pleadings moving for Summary Judgment, nor had the Honorable Abraham Marovitz granted said Motion for Summary Judgment based upon the matters found to be "fact" by the Appellate Order; the defendants defended Count II of the Amended Complaint herein on the ground that the Corporate plaintiff was unable to substantiate damages (App. 67 and 85); the Appellant never defended, nor did it have to, the charges raised under the Appellate Order's factual findings.

4. That it is respectfully submitted that the Appellate Order demonstrated that said "findings of fact" were made without this Court being properly advised in the premises: (1) that on September 28, 1971 the Honorable Daniel A. Roberts, Judge in said Cook County proceeding found that said "tampering with an automobile" charge was rendered a nullity pursuant to a habus Corpus proceeding occurring in said County; (2) that on said September 28, 1971, said Judge Roberts found George Christofalos had not falsely denied said criminal conviction; and (3) that defendant, Cepon, had no tangible evidence of an alleged criminal background of George Christofalos when the corporate liquor license was denied.

5. That said findings of fact made by Judge Roberts, directly opposite to the findings of fact made in the Appellate Order of November 22, 1974, are all set out in Plaintiff's Appellate Group Exhibit No. 1, at pages 14-15; 21-23; 26-28; that said findings of fact, made by said Judge Roberts, or orders he entered, were never

appealed from by defendants herein, notwithstanding that defendants had perfected an Appeal in said Cook County proceeding by filing a Notice of Appeal and Praecipe for the Trial Court record. (Pages 91-94 and 95-102 of Plaintiff Appellate Group Exhibit No. 1)

6. That Appellant believes that this Court would wish to amend or reverse it's position stated in it's Appellate Order in light of the findings of fact made in the previous Cook County proceeding; for it is respectfully submitted that said findings of fact made in the Cook County Court are res judicata forclosing the Appellate Court in making it's own findings of fact subsequently concerning the propriety of issuing a state liquor license pursuant to a previous state Court proceeding.

7. That when said Appellate Order of November 22, 1974 was received by Appellant's attorney on or about November 25, 1974, said attorney saw the necessity of filing said Common Law record and transcript of Proceeding with this Court, however said attorney had not seen said Transcript of Proceedings since previous to August 30, 1973 (over one year previous to said Appellate Court Order) when said transcript had been reviewed at the Office of the Circuit Court of Cook County's Clerk, during said attorney's preparation and filing of a Reply to Defendant's Motion for Summary Judgment, however, said attorney had no reason to reproduce said transcript of proceeding, nor could said attorney recollect the exact contents of said transcript so as to make any prepresentations to this Court during the 14 day period following the entry of said Appellate Order to petition this Court for a Rehearing; that it was necessary that said attorney obtain and read said transcript

to understand that exact findings made by the Honorable Daniel Roberts in said Cook County proceeding so that an exact comparison might be made with the finding of fact made in said Appellate Order.

8. That Attorney for Appellant ordered the file from the Clerk of Circuit Court of Cook County on November 26, 1974, but said transcript of proceeding was not contained in said Court file; Appellant's attorney then requested the Clerk to commence a search for said transcript, and on at least five separate occasions, spoke with representatives of said Clerk's office to learn of the progress they were making in locating said transcript; the Clerk's office finally produced said transcript on or about the 14th day of December, 1974 having found said transcript to have been misfiled in a separate section of said office for the filing of evidence depositions; that Appellant's attorney then requested and paid for certification of said transcript or report of proceedings and common law record and there was further delay of said certification until December 17, 1974 waiting for a Successor to be appointed after the death of Matthew J. Danaher, former Clerk of said Court, from December 15, 1974 to December 17, 1974.

9. That on or about December 17, 1974 Appellant's attorney prepared and caused to be printed a Petition for Rehearing and a Motion to File said common law record with said report of proceeding on December 31, 1974.

10. That there is attached hereto and made a part hereof the Affidavit of Appellant's attorney in support of the representations made above.

WHEREFORE, Appellant prays that this Court enter an Order

allowing the Plaintiff's Appellate Group Exhibit No. 1, enclosed herewith, to be filed instanter and to carry a designation of Appellant's Supplemental Appendix for purposes of a Petition for Rehearing.

Respectfully submitted,

FRANK C. STANLEY

KAMIN, STANLEY & BALKIN
188 West Randolph Street
Chicago, Illinois 60601

FRANK C. STANLEY, of Counsel

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT IN SUPPORT OF FILING PLAINTIFF'S APPELLATE GROUP EXHIBIT NO. 1

FRANK C. STANLEY, being first duly sworn upon oath, deposes and states as follows:

1. That he is Appellant's attorney referred to in this Motion.

2. That he personally contacted the representatives of the Clerk's office attempting to get a Certified Copy of the Report of Proceedings from November 26, 1974 through December 17, 1974.

3. That he did everything he felt within his power to expedite obtaining said Report of Proceeding in order to be properly advised of the exact findings of the Honorable Daniel Roberts for a comparison of the findings of fact made in the Appellate Court of November 22, 1974.

FRANK C. STANLEY

SUBSCRIBED AND SWORN to
before me this 17th day
of January, 1975.

NOTARY PUBLIC

KAMIN, STANLEY & BALKIN
188 West Randolph Street
Chicago, Illinois 60601
332-2722

FRANK C. STANLEY, of Counsel

APPENDIX 5

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH DISTRICT

No. 74-1084

RANDY'S HOUSE OF STEELE, INC.,
an Illinois Corporation,

Plaintiff-Appellant,

-vs-

AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE,
Chairman and Members of the Liquor
Commission of Lake County,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
HONORABLE ABRAHAM L. MAROVITZ, Judge Presiding.

MOTION TO ENLARGE TIME TO FILE A PETITION FOR REHEARING

FRANK C. STANLEY
KAMIN, STANLEY & BALKIN
Attorney for Plaintiff-
Appellant,
188 West Randolph Street
Chicago, Illinois 60601
332-2722

Now comes the Plaintiff-Appellant, pursuant to Rule 26(b) Federal Rules of Appellate Procedure, to enlarge the time for filing a Petition for Rehearing this Court's Order affirming the Judgment of the U. S. District Court on November 22, 1974, from December 6, 1974, to January 17, 1975, and as grounds therefor respectfully shows:

1. That on December 31, 1974, Appellant did cause to be filed or received at U. S. Court of Appeals Clerk's Office, 7th Circuit, a printed Petition for Rehearing of said Court's Order entered on November 22, 1974.

2. That on January 8, 1975, this Court entered an Order stating that said Petition for Rehearing was not filed within the 14 day period provided under Rule 40 of the Rules of the U. S. Court of Appeals for filing said Petition for Rehearing and said Order suggested that an "Instanter Motion" should accompany said Petition for Rehearing requesting leave to file said untimely Petition for Rehearing, and said Order ordered said Clerk to return to Appellant's attorney said Petition for Rehearing. Said Order indicated further that Appellant should have moved to extend time to file a Petition for Rehearing within the prescribed 14 day period or before December 6, 1974.

3. That said Petition for Rehearing was not filed within the prescribed fourteen day period because of the difficulty Appellant's Attorney encounted in obtaining a certified copy of a report of proceedings from the Clerk of the Circuit Court of Cook County, Illinois, that was vital in substantiating the grounds for Appellant's Petition for Rehearing; that the difficulty encounted in obtaining said report

of proceedings and the importance of said report of proceedings as it relates to the Petition for Rehearing, is more fully stated in Appellant's Motion to File Circuit Court of Cook County, Illinois, Common Law Record and Report of Proceedings Instanter, adopted by reference herein, and filed contemporaneously with this Motion to Enlarge Time to File a Petition for Rehearing.

4. It is respectfully submitted that the Rules of Appellate Procedures allow this Court to enlarge the time to file a Petition for Rehearing without the necessity of moving for an extention of time to so file within the prescribed 14 day period, and submits for the Court's consideration excerpts from the case of Braniff Airways, Inc. v Curtiss-Wright Corp., (CA2d, 1970) 424 F2d 427, Cert. Denied (1970) 400 U.S. 829, 91 S. Ct. 59, 27 Led 2d 59., pages 428-430, attached hereto and made a part hereof.

WHEREFORE, It is prayed that Appellant be granted leave to file a Petition for Rehearing, 15 copies being enclosed herewith, by Order extending time to file said Petition from December 6, 1974 to January 17, 1975.

Respectfully submitted,

FRANK C. STANLEY, Attorney

KAMIN, STANLEY & BALKIN
188 West Randolph Street
Chicago, Illinois 60601
332-2722

APPENDIX 6

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

January 8, 19 75

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. JOHN PAUL STEVENS, Circuit Judge

Hon. _____

RANDY'S HOUSE OF STEELE, INC., etc. and GEORGE CHRISTOFALOS, et al.,
Plaintiffs-Appellants,

No. 74-1084 vs.

AUGUST C. CEPON, et al., Chairman of Lake County Liquor Commission,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Divsn.

(72 C 1797)

This matter comes before the court on appellant's "Motion To File Circuit Court Of Cook County, Illinois, Common Law Record And Report Of Proceedings", and on appellee's response to that motion.

Appellant's motion is filed with reference to a petition for rehearing from this Court's order of November 22, 1974. Although appellant's petition has been received and lodged in the office of the Clerk of this Court, it has not been filed herein because it is untimely and is not accompanied by an instanter motion. Federal Rule of Appellate Procedure 40 requires that a petition for rehearing be filed within fourteen (14) days after entry of judgment. Appellant's petition was, therefore, due on December 6, 1974. It was submitted on December 31, 1974.

Appellant's motion states no reason why a motion to extend time to file a petition for rehearing was not made prior

to December 6, 1974. Nor has the appellant sought to state such reasons in an instanter motion. Because there is no petition for rehearing properly before this Court to which the common law record and report of proceedings might refer, appellant's motion for leave to file that record and report is denied.

The Clerk of the Court is hereby ordered to return to appellant's counsel by mail the Circuit Court of Cook County Common Law Record and Report of Proceedings and the petiton for rehearing presently lodged in his Office.

APPENDIX 7

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 28, 1975

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. JOHN PAUL STEVENS, Circuit Judge

Hon. _____

RANDY'S HOUSE OF STEELE, INC., etc., and GEORGE CHRISTOFALOS, et al.,
Plaintiffs-Appellants,

No. 74-1084 vs.

AUGUST C. CEPON, et al., Chairman of Lake County Liquor Commission,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Divsn.
No. 72 C 1797

This matter comes before the Court on the "Motion to File a Circuit Court of Cook County, Illinois, Common Law Record and Report of Proceedings Instanter" filed herein on January 17, 1975, by counsel for the plaintiffs-appellants. On consideration whereof, this Court being fully advised in the premises,

IT IS ORDERED that said motion be, and the same is hereby, DENIED.

APPENDIX 7a.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 28, 1975

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. JOHN PAUL STEVENS, Circuit Judge

Hon. _____

RANDY'S HOUSE OF STEELE, INC., etc., and GEORGE CHRISTOFALOS, et al.,
Plaintiffs-Appellants,

No. 74-1084 vs.

AUGUST C. CEPON, et al., Chairman of Lake County Liquor Commission,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Divsn.
No. 72 C 1797

This matter comes before the Court on the "Motion to Enlarge Time to File a Petition for Rehearing" filed herein on January 17, 1975, by counsel for the plaintiffs-appellants. On consideration whereof,

IT IS ORDERED that said motion be, and the same is hereby, DENIED.

APPENDIX 8

In the

United States Court of Appeals

For the Seventh Circuit

No. 74-1084

RANDY'S HOUSE OF STEELE, INC.,
an Illinois corporation,

Plaintiff-Appellant,

vs.

AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE, Chairmen and Members of the Liquor Commission of Lake County,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Honorable Abraham L. Marovitz, *Judge Presiding.*

PETITION FOR REHEARING

Kamin, Stanley & Balkin
188 W. Randolph Street
Chicago, Illinois 60601
(312) 332-2722

Attorneys for Plaintiff-Appellant Randy's House of Steele, Inc.

In the

United States Court of Appeals

For the Seventh Circuit

No. 74-1084

RANDY'S HOUSE OF STEELE, INC.,
an Illinois corporation,

Plaintiff-Appellant,

vs.

AUGUST C. CEPON, ALEX BREBNER, LLOYD MURRIE, Chairmen and Members of the Liquor Commission of Lake County,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Honorable Abraham L. Marovitz, *Judge Presiding.*

PETITION FOR REHEARING

Now comes the plaintiff, Randy's House of Steele, Inc., by his attorneys, Petition for Rehearing pursuant to Rule 40, Rules of the U. S. Court of Appeals, based upon the following matters:

The Appellate Order filed on or about November 22, 1974, made the following findings of facts:

(a) "That George Christofalos was guilty of "tampering with an auto"

(b) "that he had falsely denied this criminal conviction on plaintiff's application for the liquor license," and

(c) that "Cepon" has some tangible evidence of the background of George Christofalos when the corporate license was denied on July 23, 1970.

The above stated findings WERE NEVER at issue in the trial court. Defendant's Motion for Summary Judgment alleged that the plaintiff could not prove damages. (App. 67 and 85) The latter was the total ground raised by the defense against the plaintiff's allegations stated in Count II of the Amended Complaint. Nor did U. S. District Judge Abraham L. Marovitz raise any of the matters in his Opinion that were found to be "fact" in said Appellate Order. (App. 123-130)

The above stated facts were at issue in a cause of action in the Circuit Court of Cook County, Illinois, entitled *Randy's House of Steele, Inc., an Illinois corporation* v. *Illinois Liquor Control Commission, Donald G. Adams, Chairman; August Cepon, Local Liquor Control Commissioner of Lake County, General No. 70 L 17611* (Supp. App. 1-102). In the latter proceeding the Honorable Daniel A. Roberts made findings of fact exactly opposite from the findings stated in the Appellate Order. Said proceeding resulted in the Illinois Liquor Control Commission being reversed and the local authority being compelled to issue a liquor license to the corporate plaintiff herein. Judge Roberts' findings of facts or his Orders were not appealed, notwithstanding the fact that an appeal was perfected to the point of filing a notice of ap-

peal (Supp. App. 91) and praecipe for the trial court record (Supp. App. 96-97).

It is respectfully submitted that if this Appellate Court was given the opportunity to review the findings of fact made by Judge Roberts it would wish to amend or reverse its position stated in said Appellate Order. Plaintiff again respectfully submits that if this Appellate Court did otherwise it would be violating the principles of res judicata as they pertain to a federal court viewing the record made in an antedated state court proceeding. Plaintiff has cited numerous authorities on page 2 in its Reply Brief holding that the federal court is bound by the finding of fact made in the state court proceeding.

The Appellate Order assumed, or made a finding of fact, that George Christofalos was guilty of "tampering with an auto" and that George Christofalos "falsified" the application for the plaintiff's liquor license. Judge Roberts found that said conviction was nullified by a habeas corpus proceeding and that the plaintiff's application had not been falsified. The following shows Judge Roberts' findings:

(EDITOR'S NOTE: Mr. Wexler, attorney for plaintiff corporation; Mr. Reese, Asst. State's Attorney for Lake County; Mr. Mondike, Asst. Attorney General for Illinois)

• • • • •

> The Court: That is what these things were. The matter that you call a definite showing of crime, a crime committed in that court in 1960 could not have been a legal finding, it could not have been a legal finding. If it was not a legal finding on account of something that happened out there, he could be sprung, as it is called by Habeas Corpus, that is what happened in this case.

Mr. Reese: Yes Your Honor, but that has nothing in the record—

The Court: Now, you don't know what happened as to what record—

Mr. Reese: There is nothing in the record which shows that he was ever or had a Habeas Corpus.

The Court: Do you have the record?

Mr. Reese: The record is right here.

The Court: It isn't right here.

Mr. Reese: There is nothing—

The Court: There is nothing in the record to show either a conviction or a disposition by Habeas Corpus at a later date — nothing — absolutely nothing. There is conversation, conversation yes, but there is not any definite showing and you don't prove these things so far as the Court is concerned by simple conversation. Unless it is admitted, now when it is not admitted, you look for the record . . . (Supp. App. 14-15)

• • • • •

The Court: That is not sufficient for me, because it comes from the hands of a man who just went to the record, dug out something, knows nothing about the thing, then wrote you a letter saying, "here it is". That is not the way to prove a record no more than—No one can testify and no one who was there at the hearing, no one could substantiate the matter, insofar as his record is concerned. The only way the Court can reach it at all is by taking judicial notice of it. Well, I have reviewed the records; I have checked it back and forth and I have come to the conclusion, based upon that, that there is only one matter opened, as far as this Court is concerned. The State, through its representative, who is not here, is entitled to read the record to know what transpired here, and to speak. I am not going to bar him from it. I probably would be reprimanded if I did otherwise, but the Court has reached the conclusion and will reach

it, regardless of whether he comes in or not, because I am satisfied that there has been an over reaching by the order of the Commission of the facts and circumstances of the Statute. The Statute clearly states "felony". The necessity for the production of a record is great to charge felony. There is nothing in this record that indicates and nothing upon which the Commission can find felony had been committed, the man participated in it. Insofar as the record is concerned, on the misdemeanor, there are relevant facts, some of which are left open; they too, could easily have been proven both ways, claiming the charge. Secondly ,the incarceration, if any, is released by Habeas Corpus.

The Court is now sitting in the Circuit Court of Cook County and that Court's files are in the hands of the Clerk of the Circuit Court presently, 1960 and otherwise. They are stored somewhere, but they can be found and can be produced. Certified copies can be obtained. I cannot take judicial notice of the record made, can take judicial notice of the facts. I mean, ordinarily, I can take judicial notice of a record made by another Court in the same system, but I cannot do that in this case. I can take judicial notice of the fact that the Court, which is the sole Court, claiming to have committed a man, had no power to commit that man in 1960, under no circumstances, but could hear and try him on the basis of whether an offense had been committed, bind him over by consent and adjustment, which the State's Attorney could reduce a claimed charge and incarcerate for a short period of time in the County Jail. It is the evidence that there was an incarceration. It is the evidence that there was a dismissal after the Habeas Corpus hearing. That is all the Court needed to know, and can on the basis of that say that the answers to the questions made in which the negative was used instead of the affirmative, in conjunction with the word

"crime" was a correct answer by the applicant for the license. . . (Supp. App. 26-28)

The Appellate Order assumed, or made a finding of fact, that defendants, particularly August Cepon, chairman, had in their possession tangible evidence (documents, etc.) that George Christofalos was a criminal when defendants conducted its purported hearing and denied the plaintiff's liquor license on July 23, 1970. Judge Roberts found specifically that there was no such tangible evidence, and that it was not until November, 1970, that George Christofalos had the opportunity to defend against the charges defendants made against him. The record shows the following:

(EDITOR'S NOTE: The "letter" refers to an arrest record from the Berwyn, Illinois, Police)

• • • • •

The Court: You will have to go far to have the Supreme Court look at the proposition of the gift to a wife and in this case what did the gift amount to, the document that came following it closed the matter. Of course she had certain rights that she cannot exercise, this was of no consequence, except that it is illustrative of how the matter was dragged on. If there was a conviction of a crime, it was just one, two, three, show it, and that is over. When it knows that you go fishing and find through a letter from many years afterwards and we talk about the letter a little bit—

Mr. Reese: That is not the letter; there was something attached to the letter in the original—

The Court: When the letter was produced?

Mr. Wexler: It was in August, after the July 23rd matter had been closed. When you came to this discussion of it before the Board in November then the letter was produced, but it didn't have anything to

do, except to give you a writing by a man in an office in Berwyn.

The Court: That he picked up the record that is what you brought here. Nevertheless, when you got that, that was August when you first disclosed it. It was in November. When it related to something, you tried to tie it back to July 23rd. It was not before anybody on July 23rd.

Mr. Reese: Since this matter was tried Trial De Novo before the State Liquor Commission, Your Honor—

The Court: In November.

Mr. Reese: No, November—Now, anything that happened—

The Court: The point is that somebody testified and said they had the letter when he wrote the order of July 23rd; that wasn't true. . . (Supp. App. 21-23)

Judge Roberts found as fact that the defendants acted illegally, arbitrarily, wrongfully and discriminatorily when denying the plaintiff its liquor license, and the federal courts follow state laws and decisions with respect to issuance or denial of licenses. *Douglas* v. *Noble*, 43 S.Ct. 303, 261 U.S. 165, 67 L.Ed. 590 (1922); *Steinbach* v. *Metzger*, C.C.A. Pa., 63 F.2d 74 (1930). Judge Roberts stated:

The Court: I have thought of that, but there are one or two threats in this record, which indicate to me this is not to be interfered with. It does not belong here. It belongs in Lake County. The way I viewed it, I would rather make a decision closing out this matter here and let whatever happens in the future happen in Lake County where it belongs.

The test of citizenship, the test of local, the whole atmosphere around it is clothed in general. On the matter of the old res adjudicata, I would rather stop it here rather than go over the record on the matter

of this so-called crime-felony, misdemeanor or what, all the relationship to be found in a habeas corpus matter as a result of incarceration.

I am inclined to think something should be done to stop, as far as we are concerned and as far as the whole matter is concerned. The threats to me in a courtroom and in the record,—"you will never get a license" and when men, who are officers of an organization say to a man who has already purchased a place of business that he will never get a license, are stepping outside of their rights. He will get a license if he is entitled to it and no license if he is not entitled to it. . . (Supp. App. 53-54)

• • • • •

The Court: You are going to harass him. That is all right with me. You will have to do it in court somewhere, but I am fixing this and establishing this, because you have no more right to tell a man he will never get a license without the authority of court—

Mr. Mondike: If you read the transcript—

The Court: I read in between the lines, too. When a person buys a piece of property in the County and he is told "We are going to stop you from using your property," they can buy him out but they can't destroy him. That is all there is to that aspect. . ."

You draw a separate order, denying—there is no order in the file. The motion to file is denied. There was an answer already placed in the file but nothing was done with it. No order. That is a separate order. (Supp. App. 58)

The Appellate Order states that the defendants "inadvertently" failed to appeal the decision of Judge Roberts. The record shows that there was no "oversight" in failing to appeal said decision. The State's Attorney of Lake County had perfected its appeal: a notice of appeal

and a praecipe for the trial court record had been filed. It was interesting to note that it was Judge Roberts' desire to establish res judicata concerning his findings relating to the conduct of the defendants in denying the corporate liquor license.

Respectfully submitted,

KAMIN, STANLEY & BALKIN
188 W. Randolph Street
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Attorneys for Plaintiff-Appellant
Randy's House of Steele, Inc.

FRANK C. STANLEY
Of Counsel